

**THE RULES OF PROCEDURE**  
**FOR THE**  
**CITY OF GAITHERSBURG PLANNING COMMISSION**

**Section 1 - Purpose**

The purpose of these rules is to establish procedures for the conduct of hearings and other proceedings in all cases in which a final decision or recommendation is made by the Planning Commission after a hearing (a) required by law or (b) conducted by practice of the Commission. Hearings and related proceedings which shall be subject to these rules include, but are not limited to:

- A. Preliminary plans of subdivision;
- B. Site plan review (concept, preliminary, final and amendments to final), which may include subdivision;
- C. Recommendations to the City Council on local map amendments, text amendments, master plan amendments, annexations, and matters involving historic preservation;
- D. Amendments to optional method and schematic development plans; and
- E. Any other matters upon which the Planning Commission may be mandated to act pursuant to public hearing by law or ordinance.

**Section 1.1. - Powers**

In fulfilling its legislative mandate the Commission may exercise the following powers:

- A. Hold conference with parties and or their legal representatives to clarify issues and expedite full and fair handling of a case;
- B. On request by any party, or by the Commission, dispose of procedural requests, including but not limited to the following actions: to amend, to consolidate applications or petitions, or to reopen the record of any case in order to receive additional evidence or information;
- C. On request by any party, or by the Commission, introduce into the record documentary or other evidence;
- D. Rule upon the admissibility of all submissions and requests to the Commission;
- E. Require parties to provide additional information about the application;
- F. Waive minor procedural defects or errors that do not affect substantive rights of the parties in order to proceed on the merits;

- G. Take any other action necessary to carry out the intent of the Zoning Ordinance.

## **Section 1.2 - Sign Posting**

A. All property which is the subject of public hearings subject to these rules, as set forth in Section 1, where the Planning Commission makes a final decision shall be posted with a sign, except for hearings placed on the Planning Commission's consent agenda. The sign shall be provided by the Planning Commission staff upon payment of an appropriate fee established by the City Council and shall be posted by the applicant at least nine (9) days before the hearing. Following the hearing, it shall be the responsibility of the applicant to remove within a five-day period after the hearing all posted signs from the property, and 4'x3' signs must be returned to the City. The sign shall have (at least) the following information shown on it:

1. The title of "Planning Commission Hearing";
2. The type of application;
3. The application number;
4. Date, time, and place at City Hall of the public hearing; and
5. A telephone number for additional information.

B. If the property has frontage on one (1) or more improved streets, there shall be one (1) sign posted for each one thousand (1,000) feet (or fraction) of frontage on each street. The sign(s) shall be posted on the property near the street right-of-way, so as to be visible from the improved portion of the street. When more than one (1) sign is required to be posted along a street, the signs shall, where practicable, be evenly spaced along the street.

C. If the property does not have frontage on an improved public street, then one (1) sign shall be placed on the property by the applicant. This sign shall be near the boundary of the property and visible from an adjoining property. Another sign shall be placed by the applicant near to, and visible from, the improved portion of the nearest, most-traveled street. This sign shall indicate it is not on the subject property.

D. The minimum size of each sign shall be two (2) feet in width by three (3) feet in height for all signs to be located abutting streets that are two (2) lanes or smaller. However, the minimum size of each sign shall be four (4) feet in width by three (3) feet in height for all signs to be located abutting streets that are larger than two (2) lanes.

E. All signs posted shall be placed on a conspicuous location observable by the general public and be legible.

F. The applicant shall be responsible for reasonable maintenance of all signs. In the event a sign is removed, falls down, or otherwise is not conspicuous and/or legible on the property or in the right-of-way during the pendency of and until the date of the hearing, it shall be the responsibility of the applicant to re-post the sign.

G. The applicant shall file a written statement in the record of posting prior to the commencement of the hearing.

### **Section 1.3 – Notification**

All hearings subject to these rules, as set forth in Section 1, shall be included on the Commission's tentative meeting agenda, which shall be mailed at least nine (9) days before the hearing, except for hearings on the consent agenda. The tentative agenda shall be mailed to all abutting and confronting properties relating to the property under consideration and to the citizens associations, homeowners associations, or condominium associations for the area. The Planning Commission agenda is generally available on the City's website at [www.ci.gaithersburg.md.us](http://www.ci.gaithersburg.md.us).

### **Section 1.4 – General Information**

Generally the Planning Commission will hold meetings twice a month on the first and third Wednesdays of the month. At least three (3) persons appointed to the Planning Commission must be present to constitute a quorum for the conduct of a hearing.

### **Section 2 - Order of Presentation**

A. Unless otherwise determined by the Chair, the following order of presentation shall apply:

1. Introduction by staff;
2. Presentation by Applicant;
3. Public agency comments, if any;
4. Public comment and questions;
5. Planning Commission discussion;
6. Applicant/Staff respond;
7. Staff [comments] recommendation and suggested conditions;
8. Applicant/Staff responds;
9. Discussion and vote by Planning Commission.

B. The Chair may request larger groups or associations to select an individual to speak for the group for the purpose of avoiding repetition of testimony. The selection of a spokesperson is not intended to prevent the non-repetitive individual testimony of group members. The Chair may also take such other actions to facilitate the orderly, expeditious receipt of testimony and other evidence and argument.

### **Section 3 - Preliminary Action**

Upon convening the hearing, there shall be a brief explanation by the Chair of the purpose of the hearing, followed by a brief introduction by staff of the application. For cases where there is an official record or index of memorandum, there shall also be a brief summary by staff of any exhibits or documentation, which has been received in the case file, before the applicant's presentation and public discussion and comments begin. The case file shall be a part of the record and shall be available to the public at reasonable times.

### **Section 4 - Information from the Public**

Each speaker at a hearing shall state: (a) name, and (b) address, in addition, if speaking for another individual, a group or organization, the name and address, if any, of the group or organization. The Chair may announce reasonable registration requirements for speakers to facilitate distribution of minutes and future notification. Speakers at hearings may not be limited by residency or proximity requirements. The Chair shall have the power to control the course of the hearings to ensure a complete, fair, and orderly proceeding. The Chair may limit comments or testimony of disruptive attendees and direct their removal from the hearings or other Commission proceedings.

### **Section 5 - Cross-Examination of Witnesses**

The Chair, upon request, shall permit any party to a case to cross-examine a witness at the conclusion of that witness' testimony. For purposes of this section, a party to a case includes the applicant and any person or group that has, in writing or orally for the record, identified themselves as being in favor or in opposition to the application. Examination should be limited and directed to information and evidence presented by the witness. The opportunity to cross-examine a witness may not be used by the examiner to begin his/her testimony. The Chair may, in the exercise of discretion, limit the number of examiners for each side. General questions about an applicant's plan may be asked separately from cross-examination.

### **Section 6 - Time Guidelines**

The Chair, in his/her discretion, may impose time limitations on the presentation of evidence and testimony at a hearing in order to facilitate the orderly and expeditious conduct of the hearing. The Planning Commission normally will not begin consideration of a new site plan after 10:30 p.m.

### **Section 7 - Recess to Another Time and Place**

Any hearing may be recessed or continued to a time and place which is announced, or posted at the time and place for which notice originally has been given, and no further notice or publication shall be necessary in order to reconvene the recessed hearing. However, if the

hearing is recessed to another regularly scheduled meeting of the Commission, then notice shall be provided in the agenda of the Commission.

## **Section 8 - Evidence and Submission Guidelines**

A. In all cases in which the applicant is required to submit a plan for consideration by the Planning Commission at a hearing (i.e., preliminary plan of subdivision, site plan review, etc.), the applicant shall submit those plans twenty-six (26) calendar days before the first meeting of the month, except for Consent items. Any revisions to the plan as filed shall be submitted to staff for inclusion in the record by noon on the 12<sup>th</sup> calendar day before the hearing date. If the applicant submits a revised plan less than twelve (12) calendar days before the hearing, the Planning Commission may proceed with the hearing only after granting a plan submission time waiver for good cause shown by the applicant for submitting the revised plan late.

B. Although not guided by formal rules of evidence, certain rules will be followed at hearings, as indicated below:

1. Hearsay evidence, if relevant, will normally be accepted into the record.
2. Objections to testimony by a party to a case will only be sustained for the most compelling reasons so that the purpose of providing wide latitude to witnesses will be served.
3. Objections to testimony by a party to a case must be made at the time the information or exhibit is presented or the objection will be considered waived.
4. The Commission may take administrative notice of matters of common knowledge or expertise in reaching a decision on a case.
5. Testimony which is immaterial, repetitive or irrelevant, shall not be allowed.
6. Written testimony of a witness present to be considered by the Planning Commission during a site plan review must be read into the record. Letters or electronic communications submitted by interested persons will be included, but not read, into the record.
7. Written reports, documents, plats, plans, studies and letters containing analytical contents or legal arguments must be submitted at least five (5) business days before any scheduled public hearing with the exception of:
  - (a) Photographs of site – existing conditions;
  - (b) Material samples not practical to distribute via Commission's packages;
  - (c) Rendered versions of previously submitted plans, elevations or other drawings or artist renderings.

Materials enumerated hereinabove which are not timely submitted may only be received at the hearing upon good cause shown as to why said evidence could not be timely submitted. The Commission may receive or reject as untimely the offered evidence in the sole discretion of the Commission.

C. The applicant may withdraw its plan from consideration by the Planning Commission at any time prior to the Planning Commission's oral votes to approve or deny the plan.

### **Section 9 - Closing the Record**

Unless otherwise determined by the Commission, the record will remain open until the Commission orally votes to close the record or to approve or deny the plan. If the Commission closes the record by duly adopted motion prior to the vote to approve or deny the plan, no additional evidence will be received except (a) for good cause shown as to why the evidence was not presented while the record was open and (b) a showing that the evidence is material and relevant.

### **Section 10 - Decision**

The legal date of approval of a site plan or amendment to final plan shall be established by the date of the Site Development Approval (SDA) form, or if a written opinion is to be rendered, then the date of the adoption of the final opinion shall constitute the date of the final decision by the Planning Commission.

### **Section 11 - Reconsideration**

A. A request for reconsideration of any matter in which the Commission has final decisionmaking authority may only be made by an aggrieved party, must be in writing, and unless waived by the Commission for just cause, must be received by the Planning Commission no later than seven (7) days after the date of the final decision. The request must specifically state the basis upon which the aggrieved party contends the Commission's decision should be reconsidered. The Commission may grant a request to reconsider, provided sufficient grounds are demonstrated. Such grounds may include:

1. a clear showing that the action of the Commission did not conform to relevant law or its rules of procedure;
2. evidence indicating that certain pertinent and significant information relevant to the Commission's decision could not reasonably have been presented at the hearing before the Commission or otherwise included in the record, together with a statement detailing why such information was not timely presented; or
3. such other appropriate compelling basis as determined by the Commission.

The fact that a party raises an issue worthy of reconsideration does not itself require the Commission to reconsider a prior action.

B. If a request for reconsideration is timely received, City staff shall place the written request for reconsideration on the agenda of the Commission for the next regular meeting of the Commission. Commissioners may question staff or any interested party then present to clarify points raised in the written request; otherwise, testimony need not be received. At such time, Commissioners shall determine whether the written request raises a proper and sufficient basis for reconsideration. Any Commissioner who:

1. voted in the majority on the action drawn into question, and
2. believes an issue warranting reconsideration has been raised,

may then move to reconsider the action. If no such member remains on the Commission, the Chair may make the motion on his/her own initiative or at the request of any Commissioner.

C. If a motion to reconsider has been duly adopted by the Planning Commission, the prior final decision of the Commission shall be void and the record before the Commission shall be automatically reopened. The Commission shall schedule a hearing for a subsequent date and time, providing all parties of record at least ten (10) days advance written notice of the hearing.

D. A timely filed request for reconsideration shall not operate to extend any time for appeal provided by applicable law so long as the Planning Commission holds a regular meeting within fourteen (14) days after the decision which is the subject of the reconsideration request. If the Planning Commission does not hold a regular meeting within fourteen (14) days after the decision which is the subject of the timely filed reconsideration request, then the time for appeal is automatically extended until the expiration of three (3) calendar days after the Commission next holds a regular meeting.

## **Section 12. Rule Changes and Supplements**

A. **Suspension of Rules** -- The suspension of any rule of procedure shall require the unanimous concurrence of those members of the Commission present and voting. A separate suspension of the rules shall be necessary for each proposition.

B. **Repeal or Amendment of Rules** -- No motion, order or resolution to repeal or amend a rule of the Commission shall be considered or acted upon unless it shall have been submitted in writing to the Commission at least two (2) weeks prior thereto, together with the written text of any proposed amendment. The repeal or amendment of any rules of the Commission may be by majority vote of those members present and voting.

C. **Robert's Rules of Order** -- The rules of parliamentary practice and procedure, as set forth in the Robert's Rules of Order most current edition and except as modified by these Rules of Procedure, shall govern the Commission in all cases to which these Rules of Procedure apply.

### **Section 13. Procedure for Use of Alternate Planning Commissioner**

A. The Planning Commission Alternate shall serve in the place of any regular member of the Commission who is absent or disabled from service. In such instances, the Alternate Member shall have all the powers, duties and responsibilities of a regular member and shall fully participate in all matters before the Commission.

B. The Planning Commission Alternate shall also participate fully with the Planning Commission when a full complement of Commission members is present on all matters and proceedings which are not regulatory in nature. Regulatory matters involve quasi-judicial proceedings in which the Planning Commission exercises final decision-making authority. Non-regulatory matters involve all other matters coming before the Commission including, but not limited to, matters involving the rendition of recommendations to the Mayor and City Council, City Board of Appeals or other agencies of the City government.

C. The Planning Commission Alternate shall not participate in any regulatory matters coming before the Commission when a full Commission complement of members is present.

### **Section 14 – Election of Chair and Vice Chair**

In accordance with §24-239, the election of Chair and Vice Chair shall be held at the Planning Commission's first meeting of each calendar year.

*Approved 6/4/03 – to be revised 3-3-04*